

had no hesitation, at the instance of any one interested, so to have proceeded against the purchaser *Jeremiah Booth* himself; but he was dead. His liability, however, it was obvious, had, in this respect, devolved upon his representatives, so far as they had assets. And therefore, an order was passed, calling on his heir and administrator to pay the balance of the purchase money, or shew cause. *John Llewellyn* and wife accordingly, among other things, shewed for cause, that the deceased purchaser *Booth* had, as they alleged, under the authority of the court, and with the consent of the trustee, made sundry payments to the trustee, and also to *Edmund Key*, the guardian of the infant heirs, leaving a balance still due, &c. Whereupon it was agreed and adjudged, that no more than \$2,018 93 of the purchase money then remained due. There was no doubt, that the court, as the vendor, for the benefit of all concerned, to the extent of the purchase money unpaid, held an equitable lien upon the estate sold to *Booth*; and there was no doubt, that in virtue of that equitable lien a re-sale of the estate might be made for the payment of the purchase money. Upon those grounds therefore, the trustee *Merrick* was appointed; and a re-sale was ordered and made accordingly.

Thus, by a consequence of the original suit, a new controversy arose, after the original plaintiff had been satisfied, and had departed from the case, between the original defendants, now placed in the position of plaintiffs against the representatives of the deceased purchaser as defendants. This new controversy, as regarded the balance of the purchase money, admitted to be due, was, by its payment, in that particular, terminated; and the case, in that respect also, finally brought to a close.

The heirs of *Richard Jordan*, deceased, had, however, by their petition alleged, that a large amount of the purchase money had, during their infancy, under the order of the court, been paid to *Edmund Key*, their guardian, by the trustee *Cook*, and by the purchaser *Booth*, and been wasted by the said *Key*, who had thereafter become and then was insolvent; and that *Booth*, the purchaser, having been bound, in a guardian's bond, as one of his sureties, they had a lien upon *Booth's* estate for the amount so paid to and wasted by *Key*. Therefore, as *Key* was, as they alleged, no party to these proceedings, they prayed, that he might be summoned as such, that they might have the benefit of his answer. It being a general rule, that all co-obligors must be made parties, it seemed to have been conceived to be proper thus to ask to have *Key*